

Decision 04-04-003 April 1, 2004

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Establish Policies  
and Cost Recovery Mechanisms for Generation  
Procurement and Renewable Resource  
Development.

Rulemaking 01-10-024  
(Filed October 25, 2001)

**OPINION GRANTING INTERVENOR COMPENSATION  
TO THE UTILITY REFORM NETWORK**

**I. Summary**

This decision awards The Utility Reform Network (TURN) \$119,571.40 in compensation for its contributions to Decisions (D.) 03-02-034, D.03-02-072, D.03-06-067, D.03-06-071, D.03-06-073, D.03-06-076 and for its participation in the Procurement Review Groups (PRG) related to the subject rulemaking.

**II. Background**

During the energy crisis of 2000-2001, the state's major electric utilities were unable to directly purchase electricity, due in part to the demise of the Power Exchange and to the utilities' inability to secure financing, among other reasons. In response to this situation, the Legislature enacted ABX1 1, authorizing the California Department of Water Resources (DWR) to purchase electricity on behalf of the utilities, with the utilities acting as a billing and distribution agent. DWR's purchasing authority expired on December 31, 2002. Recognizing that renewable energy resources would be an important recovery element to the energy crisis, the Legislature also enacted Senate Bill 1078 in 2002

to establish the California Renewable Portfolio Standard (RPS) program. The RPS calls for 20% of the state's energy use to be developed from renewable resources by 2017, with annual increases of at least 1% throughout the length of the program.

The Commission opened Rulemaking (R.) 01-10-024 to establish ratemaking mechanisms to enable the three major electric utilities, Pacific Gas and Electric (PG&E), Southern California Edison (Edison) and San Diego Gas and Electric (SDG&E), to resume purchasing electricity and related services. The rulemaking also solicited proposals on how renewable resources would be included as part of energy procurement plans and new generation facilities serving the state and on implementation of the RPS program. This proceeding has resulted in many interim Commission orders and remains open to date.

Because of statutory deadlines, an expedited schedule was necessary in the RPS phase of the rulemaking. Procedural processes were developed and PRG's were established for all three electric utilities to hasten the review process. The role of the PRG is to provide an expedited review and informal approval of the interim procurement contracts. TURN is a PRG member for all three electric utilities. This compensation award is for TURN's contributions to the six subject decisions and for its activities in the first half of 2003 in the implementation of the RPS and participation in the PRG's.

### **III. Requirements for Awards of Compensation**

The intervenor compensation program, enacted by the Legislature in Pub. Util. Code §§ 1801-1812, requires that the intervenor satisfy all of the following procedures and criteria to obtain a compensation award:

1. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
2. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
3. The intervenor must file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate significant financial hardship. (§ 1804(b)(1).)
5. The intervenor's presentation must have made a substantial contribution to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§ 1803(a).)
6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural issues in Items 1-3 above are combined, followed by separate discussions on Items 4-6.

#### **IV. Procedural Issues**

The prehearing conference in this matter was held on January 8, 2002. TURN filed its timely NOI on February 5, 2002. On May 28, 2002, Administrative Law Judge (ALJ) Walwyn issued a ruling that found TURN to be a customer under the Public Utilities Code. TURN filed its request for compensation on August 22, 2003, within the required 60 days of D.03-06-071. TURN has satisfied all the procedural requirements necessary to make its request for compensation.

#### **V. Financial Hardship**

An intervenor seeking compensation must show that, without undue hardship, it cannot pay the reasonable costs of effective participation in the proceeding. In the case of groups or organizations, significant financial hardship is demonstrated by showing that the economic interest of individual members is small compared to the overall costs of effective participation. (Pub. Util. Code § 1802(g).) Such a finding is normally made in the ALJ's preliminary ruling as to whether the customer will be eligible for compensation (§ 1804(b)).

In its NOI, TURN asserted financial hardship through a rebuttal presumption, as allowed by § 1804(b)(1), by showing a finding to meet this requirement was made in another proceeding within the last year. On May 28, 2002, ALJ Walwyn ruled that TURN met the significant financial hardship condition.

#### **VI. Substantial Contribution**

TURN has been an active and productive participant in the development of the RPS in California. TURN contributed to each of the six subject Commission decisions and as a member of the PRG for each of the three electric utilities.

In D.03-06-071, we adopted the RPS program for California. TURN actively participated in the RPS process, attended meetings and workshops, filed necessary briefs and formal comments and provided expert witness testimony and cross-examination of witnesses at the evidentiary hearings. TURN contributed to this decision by developing a set of “joint principles” with SDG&E to be used in implementing the RPS to reflect both customer and utility interests. The Commission adopted most of these principles, including transferring environmental attributes of renewable energy to the utilities, developing a market price methodology, calculating gas hedging costs and fuel price inputs and establishing a benchmark to allow sellers to submit varying price bids, among other issues. The Commission directed parties to use the TURN/SDG&E principles as the basis for negotiations on standard contract terms and adopted TURN’s proposal for monetary penalties for non-compliance.

D.03-06-073 denied rehearing of D.02-08-071, which adopted interim short-term energy procurement policies and rules, and D.03-05-071 denied rehearing of D.02-10-062, which adopted interim long-term procurement rules. Petitions for rehearing on the two initial decisions were filed by the electric utilities. TURN filed responses in both cases supporting the Commission’s initial decisions.

TURN is also seeking compensation for a small number of hours for its contributions to three other procurement related decisions. D.03-02-072 allocated biomass contracts where the Commission recognized, although did not adopt, TURN’s position on competitive solicitation. D.03-02-034 granted PG&E’s emergency motion, formally supported by TURN, to suspend an undesirable procurement contract during the summer of 2003 that created barriers in securing stable energy supplies. D.03-06-067 granted in part a Petition to Modify D.02-12-074, filed by Edison. TURN supported, and the Commission adopted

quantifying the magnitude of a cap on disallowances associated with violations to standards of conduct, among other recommendations. TURN's participation in these three decisions assisted the Commission in the outcome of each.

The PRG process includes a review of short-term strategies and costs and how renewable energy issues are addressed. Most details of PRG activities are protected by confidentiality agreements. TURN participated in this process from the onset, attending most meetings, workshops and conference calls, submitting comments and feedback to the utilities and making appropriate filings as part of the PRG process. TURN also participated in the development of various procurement contract elements, protocols and terms, including a contract modification that continues the consideration of both demand and supply side resource options.

This proceeding has many overlapping issues and involves many parties. Inevitably, intervenors took the same or similar positions on some issues. However, we believe TURN took reasonable steps to coordinate with other parties to complement and assist each other when possible. TURN offered different viewpoints or arguments that supplemented, complemented, or otherwise contributed to the presentation of other parties taking similar positions.

In D.02-10-062 (interim long-term procurement contracts), we stated that "participation in the procurement review process.... by non-market participants who are eligible to request intervenor compensation should be fully compensated because their active participation makes a significant contribution to this proceeding." (p. 3-4). The participation of TURN provided an overall benefit to the Commission. Considering all of the factors listed above, we find

that TURN made a substantial contribution to the six subject decisions and to the PRG of each electric utility.

## **VII. Reasonableness of Requested Compensation**

### **Summary of Compensation**

The components of this request must constitute reasonable fees and costs when compared to market rates for similar services from comparably qualified persons. TURN requests \$128,530.77 for its participation in this proceeding, as follows:

#### **Attorney Fees**

Michel Florio	2002/2003	46.25 hours @ \$385/hour	\$ 17,806.25
Mathew Freedman	2002	25.5 hours @ \$200/hour	\$ 5,100.00
Mathew Freedman	2003	354 hours @ \$250/hour	\$ 88,500.00
Mathew Freedman	Comp Request	16.75 hours @ \$125/hour	\$ 2,093.75

#### **Expenses**

Photocopying	\$ 1,829.55
Travel (Freedman and Florio)	\$ 251.00
Other Business Expense	\$ 330.62

#### **Expert Witness/ Consultation Fees**

William Marcus	2002	15.9 hours @ \$175/hour	\$ 2,782.50
William Marcus	2003	51.6 hours @ \$185/hour	\$ 9,546.00
Travel Expense (Marcus)			\$ 291.10

<b><u>TOTAL</u></b>	<b><u>\$128,530.77</u></b>
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## **VIII. Hours and Expenses Claimed**

TURN documented its claimed hours by presenting a daily breakdown of the hours accompanied by a brief description of each activity. The records reasonably support the claim for total hours.

Attorney Florio is TURN's co-director for energy policy and senior attorney. An hourly rate of \$385 is being requested for work he performed in 2002 and 2003. We find this rate reasonable as we previously approved this same rate for the same years in D.02-09-040 (2002) and D.03-08-009 (2003).



For Attorney Freedman, hourly rates of \$200 for work performed in 2002 and \$250 for 2003 are requested. We previously approved the \$200 rate for Freedman for 2002 in D.03-04-011, and find that rate reasonable here. For 2003, we find a rate of \$225 reasonable for Freedman. For its intervenor contributions in another proceeding (R.02-01-011; electricity direct access and cost responsibility surcharges), TURN similarly requested a \$250 rate for Freedman for 2003. In D.04-02-017 (the compensation award in the direct access proceeding), we found the \$250 rate to be excessive in relation to Freedman's experience as compared to other attorneys with similar backgrounds and reduced the hourly rate to \$225. Based on this prior decision, the rate for Freedman in this proceeding is also reduced to \$225. The total award for Freedman for 2003 will be reduced to \$79,650 (354 hours x \$225), and the amount for preparing the compensation request by Freedman reduced to \$1,884.38 (16.75 hours x \$112.50).

TURN engaged the consulting firm JBS Energy, Inc. (JBS) for this proceeding. William Marcus, JBS Principal Economist, was TURN's primary expert policy witness during hearing. Marcus supervises five other economists at JBS and has been directly involved in energy policy and utility regulation issues for more than 20 years. The hourly rate requested for Marcus is \$175 for work performed in 2002 and \$185 for 2003. In D.04-02-017, we approved these same rates for Marcus for the same years and we find these rates reasonable here.

TURN is requesting \$1,829.55 for photocopying expenses. A detailed accounting of the documents copied, number of pages (at five cents per page) and parties served is included in the appendix to its request. The appendix also accurately shows the total for photocopying as \$1,929.55. We will increase the request for photocopying expenses by \$100 due to this inadvertent error.

Considering the approximate 40,000 documents copied and number of parties served, we find the photocopying costs to be reasonable.

The total requested travel expenses of \$542.10 (for Florio, Freedman, and Marcus) are reasonable as each attended several meetings and other events related to this proceeding. The requested business expenses of \$330.62 for telephone, fax, postage and related items are also reasonable.

After making the described decreases for the 2003 hourly rates for Freedman and the increase for photocopying expenses, the total adjusted award for TURN is \$119,571.40.

## **IX. Energy Foundation Grants**

We have a general concern over the potential for an intervenor to recover twice for the same expenses, first through grants from outside sources, and second through intervenor compensation awards. During the period 2000-2003, TURN received at least three funding grants from the Energy Foundation (EF)<sup>1</sup> of approximately \$125,000. These grants, in whole or in part, are specific to the development of renewable energy policies and the RPS in California. TURN did not provide an explanation or mention the EF grants in its NOI or its request for compensation. An ALJ ruling dated November 20, 2003 directed TURN to submit a clarification to its request for compensation explaining how the EF grants, or those from any other organization, were used, including a list of projects funded. On December 19, 2003, TURN filed its response explaining that it received grants only from EF and that no grant monies were used to fund work

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<sup>1</sup> The EF, founded in 1991, is a partnership of other major foundations, including the MacArthur Foundation, Pew Charitable Trusts, and the Rockefeller Foundation. The partnership was developed to promote renewable and sustainable energy.

for which TURN is requesting intervenor compensation from this Commission. TURN used EF grants to work on renewable issues in general, including policy design, coalition building in the early stages of the RPS, consumer education, media outreach, and participation in California Energy Commission proceedings. TURN satisfactorily demonstrated that EF funding would not duplicate any intervenor compensation award from this Commission. However, we will direct TURN to include in any future requests for compensation a statement of whether costs or expenses contained therein were recovered from outside sources. To the extent TURN uses grants to fund its intervention at the Commission, TURN's works must account for such use, and TURN's compensation claim should be adjusted accordingly.

#### **X. Award**

We award TURN \$119,571.40. This calculation is based on the hourly rates and business expenses described above. Consistent with previous Commission decisions, we will order that, after November 5, 2003 (the 75<sup>th</sup> day after TURN filed its compensation request), interest be paid on TURN's award amount at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15. Interest will continue on this award until the utilities make full payment.

We remind TURN that, like all intervenors, Commission staff may audit TURN's records related to this award, and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation.

We direct all three larger electric utilities (PG&E, Edison, and SDG&E) to share in the payment proportionally, based on their percentage of total retail

sales of electricity (measured in California jurisdictional revenues) in 2003, as TURN participated in the PRG of all three utilities.

#### **XI. Waiver of Comment Period**

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

#### **XII. Assignment of Proceeding**

Michael R. Peevey is the Assigned Commissioner. Peter V. Allen, Carol Brown, and Christine M. Walwyn are the assigned ALJs in this proceeding.

#### **Findings of Fact**

1. TURN represents consumers, customers, or subscribers of PG&E, Edison, and SDG&E, all utilities regulated by the Commission.
2. TURN filed its NOI to claim compensation on February 5, 2002, and its request for compensation on August 22, 2003.
3. TURN received grant monies from EF for work on renewable energy matters in California. TURN submitted a clarification regarding the EF grants on December 19, 2003, explaining that grant money from EF was not used to fund work subject to any intervenor compensation requests before this Commission.
4. The individual economic interests of TURN members are small in comparison to the costs incurred in effectively participating in these proceedings.
5. TURN made a substantial contribution to D.03-02-034, D.03-02-072, D.03-06-067, D.03-06-071, D.03-06-073 and D.03-06-076.
6. TURN substantially contributed to this proceeding through its participation in the PRG of each utility.

7. TURN requested hourly rates for attorneys and experts that are reasonable when compared to the market rates for persons with similar training and experience.

8. TURN requested reasonable compensation for related business expenses.

9. The total of these reasonable rates and fees is \$119,571.40.

### **Conclusions of Law**

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed fees and expenses incurred in making substantial contributions to D.03-02-034, D.03-02-072, D.03-06-067, D.03-06-071, D. 03-06-073, and D.03-06-076, and for its participation in the Procurement Review Group of each major electric utility.

2. The comment period should be waived, and today's order should be made effective immediately.

### **O R D E R**

#### **IT IS ORDERED** that:

1. The Utility Reform Network (TURN) is awarded \$119,571.40 as compensation for its substantial contributions to Decision (D.) 03-02-034, D.03-02-072, D.03-06-067, D.03-06-071, D.03-06-073 and D.03-06-076, and for its participation in the Procurement Review Group of each major electric utility.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E) shall each pay TURN the respective utility's share of its total award. The shares shall be computed on the basis of each utility's percentage of the total retail sales of electricity (measured in

California jurisdictional revenues) in 2003 (the year most costs were incurred) for all three utilities.

3. PG&E, Edison and SDG&E shall also pay interest on the award beginning November 5, 2003, at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, and continuing until full payment is made.

4. In any future requests before this Commission for intervenor compensation, TURN is directed to include a statement of whether costs or expenses contained therein were recovered from outside sources. To the extent TURN uses grants to fund its intervention at the Commission, TURN's works must account for such use, and TURN's compensation claim should be adjusted accordingly.

5. The comment period for today's decision is waived.

This order is effective today.

Dated April 1, 2004, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners

### Compensation Decision Summary Information

<b>Compensation Decision:</b>	D0404003
<b>Contribution Decisions:</b>	D0302034, D0302072, D0306067, D0306071, D0306073, D0306076
<b>Proceeding:</b>	R0110024
<b>Author:</b>	ALJ Allen
<b>Payers:</b>	Southern California Edison Company Pacific Gas and Electric Company San Diego Gas & Electric Company

### Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Change/Disallowance
The Utility Reform Network	8/22/2003	\$128,530.80	\$119,571.40	Failure to justify hourly rate; arithmetic error

### Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Michel	Florio	Attorney	The Utility Reform Network	\$385	2002/2003	\$385
Mathew	Freedman	Attorney	The Utility Reform Network	\$200	2002	\$200
Mathew	Freedman	Attorney	The Utility Reform Network	\$250	2003	\$225
William	Marcus	Policy Expert	The Utility Reform Network	\$175	2002	\$175
William	Marcus	Policy Expert	The Utility Reform Network	\$185	2003	\$185